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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 1321

C. A. POTEET, R. O. JACKSON, HARRY WRIGHT, STEVE MITCHELL and CLAUDE McGLADE,
Petitioners,

vs.

STEVE ROGERS,
Respondent.

PETITIONERS' REPLY BRIEF ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSOURI

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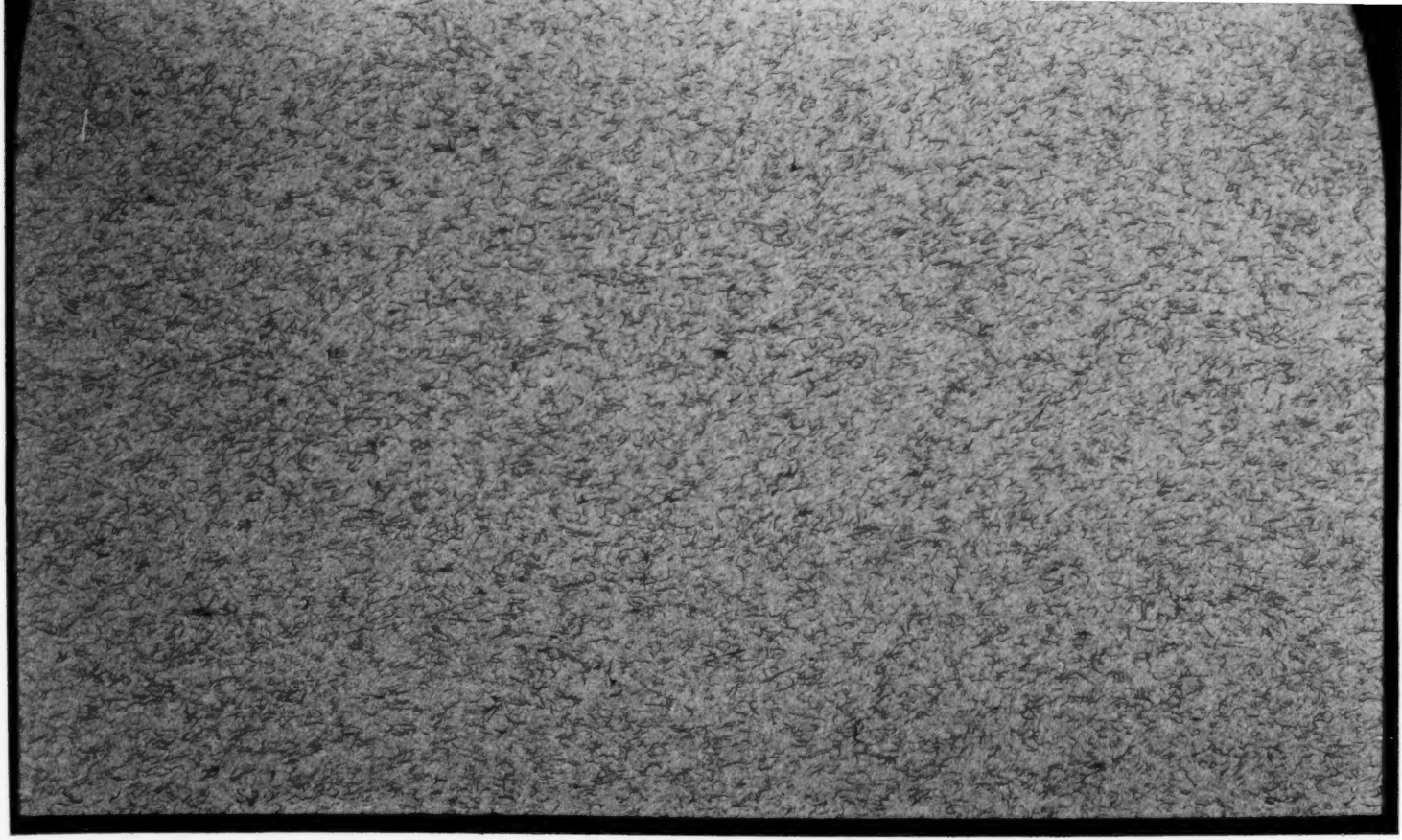

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PETITIONERS' REPLY BRIEF ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSOURI.

I and II

Respondent states (page 9) that Missouri laws prohibit unlawful agreements and concerted action resulting in the destruction of property rights in contracts and in property, and the coercion of citizens to join and help support any organization which they do not wish to join and help support.

The only law of Missouri that is involved is Section 8301 R. S. Mo., 1939, which only prohibits persons entering into any agreement or combination with others in restraint of trade or competition in the transportation, purchase or sale

of any commodity. There is no statute expressly prohibiting the acts mentioned by respondent. There is no dispute as to the facts in this case and the only question involved is whether or not the injunction issued against petitioners and upheld by the Missouri Supreme Court is justified upon the basis of the facts shown in evidence as constituting a violation of Section 8301, in view of the constitutional rights of petitioners, guaranteed by the 1st and 14th Amendments. Respondent says the evidence shows a conspiracy to obtain a definite objective by unlawful means. He assumes the means to be unlawful. The petitioners contend the means were not unlawful and that the injunction exceeds the permissible boundaries granted to the State of Missouri under the facts shown by the evidence, considering the limiting provisions of the 1st and 14th Amendments to the Constitution. Respondent claims the criminal intention of petitioners was to destroy property rights in order to make respondent a member of the union. Petitioners claim that there is no evidence of intention to destroy property rights or property or contracts, that the primary motives of petitioners merely show a good faith effort on the part of members of a *bona fide* labor organization in a *bona fide* labor controversy, to benefit their own members and other persons working in the craft, with regard to working conditions, the petitioners and other members of the union having no possible interest in the buying or selling of milk, in the price charged therefor by the producer, paid by the purchaser, or the price charged for hauling the same. The only matter involved is the furnishing of labor which cannot be a product or commodity subject to a combination in restraint of trade or competition under the Missouri statutes. Here no petitioner has any contract to buy or sell milk or any control over the price thereof. The controversy is purely over working conditions. Notwithstanding these facts, clearly shown by the

Missouri Supreme Court's Opinion, these petitioners, under the injunction against them, may not exercise their right of free speech to say with whom they will work; they may not exercise free speech to vote to strike for any reason, because there would be then no one to receive respondent's milk; they may not agree to peacefully picket the Borden Dairy because then, even though respondent's milk were received, there would be no other employees to process it or sell it after it was processed; they may not by negotiating in free, collective bargaining, attempt to procure a contract favorable to all persons bringing milk to the dairy, because if they did, that would interfere with the delivery of respondent's milk; they may not ask to have their own wages increased, and if such increase be refused, they could not strike because the injunction says respondent's milk must be processed. Under this injunction petitioners and union members may not exercise their individual rights of free speech or assembly if such activities in any way interfere with the receipt, unloading and processing of the milk held by respondent.

These examples could be continued indefinitely and make it clearly obvious that petitioners, in operating and maintaining the union, may not carry on the necessary integrated and correlated actions of the union members for their own benefit. The continuation of the receipt, unloading and processing of respondent's milk is a definite condition and limitation upon the rights of petitioners in carrying on their union activities. This is true because under the terms of the injunction the threat of the restraining order, backed by the power of contempt and the consequent arrest and imprisonment therefor, must hang over every peaceful action and labor activity carried on by these petitioners, which constitutes a condition and a whittling down of all the rights of free speech and assembly guaranteed by the 1st and 14th Amendments. These rights are fundamental

human liberties which cannot be abridged in the absence of grave and immediate danger to interests which the state may lawfully protect, and there is no such showing of grave and immediate danger to such interests. Even the case of *Lohse Patent Door Company* v. *Fuelle,* 215 Mo. 421, 114 S. W. 997, which the Missouri Supreme Court states that it follows, holds, 114 S. W. l. c. 1004: "A combination between persons merely to regulate their own conduct and affairs is allowable and a lawful combination, although others may be indirectly affected thereby," and in addition that case only and solely holds that the petition therein stated a cause of action.

Respondent evidently bases his argument on the opinion of this Court in *Carpenters & Joiners Union* v. *Ritters Cafe et al.,* 315 U. S. 722, 62 S. C. R. 807. That case merely held that the State of Texas, under its anti-trust law and as a part of the public policy of the state, would be permitted to prevent picketing of a separate business having no *nexus* with the actual labor controversy involved. This Court there held that the 14th Amendment did not prevent Texas from "drawing this line in confining the area of unrestricted industrial warfare." The possibility of that question entering into the case was expressly negatived by petitioners, in stating the question presented to this Court (Petition, pages 11, 12, 16). All the enjoined acts of petitioners here were done in the industrial area immediately involved.

Several other authorities of this Court, mainly the *Associated Press* case, 326 U. S. 1, 65 S. C. R. 1416, and the *American Medical Association* case, 317 U. S. 519, 63 S. C. R. 326, are urged upon this Court as authorities for the proposition that either the organizational campaign of petitioners was unlawful or that the means by which it was sought to be effected was unlawful. Those cases can have no possible bearing in view of the facts here, being as they

were cases in which A. P. and A. M. A. were attempting to put competing persons entirely out of business in order to perpetuate their own methods of conducting their own business. Here no petitioner or union member is attempting to put respondent out of business. He is merely one out of 96 persons engaged in hauling milk to the Kansas City market from numerous producers. The supply of milk for Kansas City does not depend upon any single milk hauler but upon the many farms in the milk shed amply supplied with herds of livestock producing milk to satisfy the ordinances of the City and the laws of the State. Whether or not this respondent continues to haul milk to Kansas City cannot in the least degree destroy competition in the production, transportation or sale of milk, or have the slightest effect on the prices, or result in any restraint of trade. Even if respondent should be driven out of business, the production and transportation facilities for milk and milk products could not possibly be sufficiently diminished or impaired so as to affect the market demand for milk. Here in the combination complained of, is only the cooperation of persons wholly within the same craft, united in a local union for self-protection only. No outsider is a party to whatever combination existed and no purpose was to be subserved which was to promote the interests of the members of this union. These facts are apparent if this Court looks into the evidence. In the latest expression of this Court in a case involving the rights guaranteed by the 1st and 14th Amendments (*Craig et al.* v. *Harney,* 67 S. C. R. 1249) this Court said, l. c. 1253:

> "In a case where it is asserted that a person has been deprived by a State court of a fundamental right secured by the Constitution, an independent examination of the facts by this Court is often required to be made."

This is a like case.

III

Respondent says this Court has no jurisdiction because no second motion for rehearing was filed, after the second hearing and opinion after the transfer to the court *En Banc*. The cases cited to sustain this were cases where this Court refused jurisdiction after application for certiorari from a divisional opinion, and not that of the court. The opinion here is an adverse opinion of the highest court in the State of Missouri. Rule 1.19, Page 14 of the Missouri Supreme Court Rules, 1945 revision, says nothing to make mandatory the filing of motion for a rehearing as a condition precedent to appeal or application for certiorari to this Court. The only controlling provision is the Judicial Code, Section 237 (8 F. C. A. Title 28, Paragraph 344 (b)), which limits review unless a final decree has been rendered by the highest court of the state in which a decision could be had. Another motion for a rehearing after the opinion of the court *En Banc*, when there had been a previous motion for a rehearing before the division, which was granted, would be a useless and unnecessary thing.

It is therefore submitted that the application for the Writ herein requested should be granted.

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FILE COPY

No. 1321

In the Supreme Court of the United States

October Term, 1946.

C. A. POTEET, R. O. JACKSON, HARRY WRIGHT, STEVE MITCHELL and CLAUDE McGLADE, *Petitioners,*

vs.

STEVE ROGERS, *Respondent.*

On Petition for Writ of Certiorari to the Supreme Court of Missouri.

BRIEF FOR RESPONDENT IN OPPOSITION.

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In the Supreme Court of the United States

October Term, 1946.

C. A. POTEET, R. O. JACKSON, HARRY WRIGHT, STEVE MITCHELL and CLAUDE MCGLADE, *Petitioners,*

vs.

STEVE ROGERS, *Respondent.*

On Petition for Writ of Certiorari to the Supreme Court of Missouri.

No. 1321

BRIEF FOR RESPONDENT IN OPPOSITION.

Preliminary Statement.

The filing of respondent's brief in opposition is authorized by Rule 38 of the Revised Rules of the Supreme Court of the United States as amended at paragraph 3, page 31 thereof.

The Opinion in the Missouri State Supreme Court.

The opinion of the Supreme Court of the State of Missouri appealed from was handed down the 10th of February, 1947 (R. page 194), and is reported in the 199th Southwest Reporter, Second Series, at page 378, *et seq.*

Jurisdiction.

The opinion of the Missouri State Supreme Court was filed on the 10th day of February, 1947, and the petition for the writ of certiorari to the Missouri Supreme Court was filed on the 3rd day of May, 1947. The jurisdiction of this Court is invoked under the First and Fourteenth Amendments to the Constitution of the United States.

Questions Presented.

1. Do the First and Fourteenth Amendments to the Constitution of the United States license the petitioners to violate the Statutes of Missouri and to enter into an unlawful conspiracy to destroy the business of third persons?

2. Is a violation of the Missouri Statutes, condemning unlawful combinations in restraint of trade, and the formation of an unlawful conspiracy in derogation of both the statutory and common law, protected from attack by the constitutional guarantees of the right of free speech and assembly?

3. Have the petitioners exhausted their appellate remedies in the appellate courts of the State of Missouri?

The Statutes Involved.

Vol. 18, Missouri Revised Statutes Annotated, Section 8301;

The First and Fourteenth Amendments to the Constitution of the United States.

STATEMENT.

The petitioners are officers and members of a labor union and some of petitioners are the employees of a milk processing plant, known as the Borden Milk and Ice Cream Company, located in Kansas City, Missouri. The respondent is a farmer of Ray County, Missouri. Ray County, Missouri, adjoins Jackson County, in which county Kansas City is located. The respondent owns several trucks and also a farm of more than 1000 acres, upon which he maintains a large herd of dairy cattle (R. 20). The milk, substantial in quantity, was carried by the respondent in his trucks to the milk processing plant in Kansas City, Missouri, where petitioners Steve Mitchell and Claude McGlade were employed. The respondent as a "Contract Hauler" also transported milk produced by several of his neighbors who lived upon the same milk route. His neighbors paid a specific amount per hundredweight for hauling their milk to the plant. About fifty per cent of the milk carried by the respondent to the processing plant was produced by himself and about fifty per cent by neighbors (R. 21). Petitioner R. O. Jackson was business agent for Local No. 207 of the Milk Drivers and Dairy Helpers, a union organization which is affiliated with the American Federation of Labor. On the 5th of April, 1945, the petitioner Jackson caused letters to be delivered to all persons who operated trucks carrying raw fluid milk from the farms of the producers to the pasteurizing and bottling plant, setting the 12th of April, 1945, as the date when a meeting would be held at which the union would decide to increase the initiation fee for new members from $5 to $25 and would fix the date upon which the members of the Union would refuse to receive

and unload any milk at the Kansas City processing plants unless the driver of the truck carrying the milk was a member of the Local Union No. 207 (R. 23-24).

At the meeting held on the 12th of April, the 20th of April following was fixed as the date upon which the employees of the milk processing plants who belonged to Local No. 207 would refuse to unload, receive or process any milk carried to the processing plants by a truck driver who was not a member of their union (R. 29).

The respondent was not a member of Local No. 207 or any other union. He was a farmer and a truck owner-operator delivering raw fluid milk in his own truck to the milk processing plant under contracts with the neighboring farmers living on the same milk route.

At the time of the occurrences narrated the war was still in progress and the owner-operators of trucks transporting milk from farms to the processing plants of Kansas City were required to have Certificates of Necessity and Convenience from the Office of Defense Transportation and operated their trucks between fixed termini. No-one else was granted a similar certificate to operate milk trucks over the same route. These truck owner-operators also held Certificates of Necessity and Convenience as Contract Haulers from the Missouri Public Service Commission which was authorized by State law to regulate matters such as the location and termini of routes. The trucks used for transporting raw fluid milk were especially designed for that purpose. The operators of these trucks had substantial investments in equipment. The milk routes had a definite value and were sometimes sold for substantial amounts. The owners of trucks operated under contracts which they entered into with the farmer-producers of milk living along their routes (R. 26-27).

On the morning of the 20th of April, 1945, the respondent, driving his own truck, left his farm home in Ray

County for the Borden Dairy plant at Kansas City, Missouri, with the morning's milk produced on his own farm and that of his neighbors. He arrived at the plant with his load of milk. Two of the petitioners who were employees of the dairy refused to unload the milk or to permit it to be unloaded, or to receive it and process it. The respondent, Rogers was asked to show his union card. He was unable to produce a union card showing himself to be a member in good standing of Local No. 207. The petitioners, Mitchell and McGlade, stated that in so doing they were acting under orders from the Union (R. 28-29).

The respondent Rogers then appealed to the superintendent of the dairy plant who was not a member of Local No. 207, but, as a representative of the management of Bordens, was in charge of the operation of the plant. He refused to permit him to unload the milk or to permit it to be unloaded or received for processing at the Borden plant (R. 29).

The respondent Rogers then took the milk produced on his own farm and that of his neighbors back to the respective farms on which it was produced in Ray County (R. 29-30).

The evidence shows that the milk returned was spoiled and became unfit for human consumption (R. 36).

The Missouri State Supreme Court reviewing the law and the evidence in the case held in effect that the owner-operators of trucks carrying raw fluid milk, under conditions similar to that of the respondent in this case, were independent contractors; that they had property rights in their contracts with the farmer-producers for whom they carried the milk to the processing plant; that the petitioners acted in concert in the furtherance of a prior understanding; that the effect of such concerted action was a restraint upon free competition in the transportation of

raw fluid milk from the farms to the processors and, as such, was violative of 18 Mo. R. S. A. 8301; that there was *not* a complete absence of threats and coercion, as the warning to the contract haulers in the letter of 12, April, of a refusal to receive their milk which would cause its spoilation was as potent a threat as would have been a threat to use violence and force in order to dump it into the gutter; that such threats followed by the coercive act of refusing to receive and process the farmers milk, thus destroying their property through concerted action in pursuance of a prior understanding and agreement, is violative of the common law prohibition against unlawful conspiracies. The Supreme Court held that, inasmuch as this was not a strike of the dairy employees accompanied by peaceful picketing many of the cases urged by the petitioners had no application, and that the unlawful acts involved were not protected by the First and Fourteenth Amendments to the Federal Constitution. (These holdings are in the opinion, 199 S. W. (2d) at pages 384 to 392, inclusive) (R. 203-218 inclusive).

This case was first argued before Division Number Two of the Missouri State Supreme Court. That division by a unanimous opinion affirmed and remanded the judgment of the court below (R. 181-182) with certain directions.

Thereafter petitioners (R. 182-192) filed motion for rehearing or transfer to the Court *en banc* which was sustained (R. 193).

The opinion of the Court *en banc* was filed February 10, 1947. It adopted as its opinion the divisional opinion theretofore handed down.

The petitioners did not file any motion for rehearing after the filing of the Court's opinion *en banc* (R. 219, *et seq.*).

THE SUMMARY OF ARGUMENT.

I.

The enforcement of a state law against unlawful combinations in restraint of free competition in trade or transportation by monopolistic combinations, by whatever means of enforcement the state law provides, does not infringe upon the guaranties of free speech and assembly in the First and Fourteenth Amendments to the Constitution of the United States.

II.

The attempt to accomplish a lawful purpose by unlawful means such as restraining or destroying existing trade, or competition or by the destruction of property or of property rights through concerted action upon the part of a group of individuals, is conspirative and is a violation of the law and may be restrained by injunction.

III.

The petitioners having failed to file a motion for rehearing after the opinion of the Missouri State Supreme Court, *en banc,* handed down on the 10th of February, 1947, have not exhausted their remedies for appellate review in the state courts of Missouri and therefore the United States Supreme Court has no jurisdiction.

ARGUMENT.

I.

The petitioners have not cited to this Court and they cannot cite any decision which stretches the protection of the First and Fourteenth Amendments to the Federal Constitution to the point where the guarantees contained in those amendments serve as a shield or cover behind which labor unions or individuals in labor unions may violate with impunity the statutes of the state, or form and execute, or attempt to execute, unlawful conspiracies condemned either by the statutes or by the common law.

The Missouri State Supreme Court reviewing the evidence in this case held specifically that the respondent was a farmer and an independent contractor; that such had been his status for more than twenty years, and that he had never been anybody's employee; that the petitioners (Poteet, Jackson and Wright) caused letters to be delivered to the respondent and other independent contractors engaged in the carrying of milk for hire, notifying them that on and after a certain date they could not deliver the milk which they carried to any milk processing plant in Kansas City unless they joined the petitioner's union; that petitioner Jackson himself testified that it was his purpose and motive to force these farmers and independent contractors to join his union; that pursuant to the notice or threat contained in petitioners letter, a meeting was held by the members of the union at which a decision was made that from and after the 20th of April, 1945, no milk would be permitted to be received, unloaded or processed at the processing plants involved unless the operators of the trucks carrying milk to such plants had joined the union; that the petitioners Poteet, Jackson and Wright

gave notice to the other petitioners who were employees of the Borden Dairy Plant that they were not to receive and unload any milk unless the driver of the truck carrying the same was a member of their union; that pursuant to these decisions and orders two of the petitioners (Mitchell and McGlade), employees of the Borden Processing Plant, on the morning of the 20th of April, 1945, refused to permit the respondent to unload his milk for processing at that plant; that the respondent appealed to the superintendent of the plant, who likewise refused to permit the milk to be unloaded; that the respondent had a certificate of War Necessity from the National Office of Defense Transportation and a Certificate of Necessity and Convenience from the Public Service Commission of the State of Missouri; that no person other than the respondent would be permitted to serve the route described in those certificates; that he had invested a substantial amount of money in trucks especially equipped and designed for carrying raw fluid milk; that when the petitioners refused to permit the raw fluid milk carried by the respondent to be received and processed, it was returned to the farm on which it was produced, spoiled and unfit for human consumption. (Opinion R. 194-203, inclusive.)

From such evidence there was no question as to the existence of an understanding and agreement followed by concerted action upon the part of the petitioners.

The laws of Missouri prohibit an unlawful agreement and understanding followed by concerted action resulting in (1) the destruction of property rights in contracts, (2) the destruction of property, (3) the coercion of citizens of the United States to join and help support any organization which they do not wish to join and help support.

The petitioners apparently have overlooked (probably wish to overlook) and desire this Court to overlook that these acts constitute a violation of the Missouri Anti-

Trust Law (which provides for the application of criminal sanctions as well as civil ones), and that such evidence clearly shows a conspiracy to obtain a definite objective by unlawful means.

Either the violation of a Missouri Anti-Trust Statute or concerted action to accomplish an objective, whether lawful or unlawful, if pursued by unlawful acts, may be restrained by injunction.

This apparent oversight or deliberate oversight upon the part of the petitioners renders the cases cited by them inapplicable. The case of *Thornhill* v. *Alabama* (310 U. S. 88, 60 S. C. R. 736), and *Thomas* v. *Collins, Sheriff* (323 U. S. 516, 65 S. C. R. 315), are both cases involving the constitutionality of state statutes, the former a law of the State of Alabama, and the latter a law of the State of Texas. The court held in these two cases that these statutes were unconstitutional. The issue in each of them was only the validity of the statute and no question of violation of law or of unlawful conspiracy was involved.

In the case of *Milk Wagon Drivers Union* v. *Meadowmoor* (312 U. S. 287, 61 S. C. R. 552), cited by the petitioners in their brief, at page 24, the injunction granted by the trial court was sustained by the United States Supreme Court because picketing was interwoven with violence. That case supports the respondent here because the unlawful concerted action of the petitioners here is as reprehensible and as much to be prohibited as is actual violence.

In the case of *Senn* v. *The Tile Layers Union* (301 U. S. 468, 57 S. C. R. 857), cited on the same page of petitioners' brief, there was no question of violation of state law or of unlawful conspiracy. Again in the case of *Milk Drivers Union* v. *Lake Valley Products, Inc.* (311

U. S. 91, 61 S. C. R. 122), the court determined as a matter of fact that carriers of milk invloved in that case were not independent contractors but were simply employees of the dairy involved.

The case of *American Federation of Labor* v. *Swing* (312 U. S. 321, 61 S. C. R. 568), merely holds that the use of peaceful picketing was not to be limited by the states to cases in which the employer's own employees are in controversy with him. Of course, no such thing is involved here. No claim is made that the respondent was an employee of any dairy, or of any person connected with the milk industry. The facts are so totally dissimilar that that case can be of no aid in deciding the case at bar.

Neither in the case of *Bakery and Pastry Drivers and Helpers Local Union* v. *Wohl* (315 U. S. 769, 62 S. C. R. 816), was there any question of conspiracy or violation of state law involved.

In *Hunt* v. *Crumboch* (325 U. S. 821, 65 S. C. R. 1545), there was a strike by employees of a certain employer and peaceful picketing which was sought to be enjoined by the lower court and the court there held that injunction would not lie because of the prohibition in the Norris-LaGuardia Amendment to the Clayton Law. The court especially refers to the Norris-LaGuardia Act as its authority for its dcision.

So with the cases cited by the petitioners at page 28. There are two features of the present case which makes all of these cases inapplicable. If we for a moment put aside all questions of the violation of the state laws and the formation and attempted execution of an unlawful conspiracy, they are:

1. Missouri has no statute comparable with the Norris-LaGuardia Act which requires certain specific findings before injunctions will lie in labor disputes, and,

2. In the case at bar there was no strike and no peaceful picketing. Had the petitioners seen fit to strike against their employers and to have picketed the dairy and had an injunction then been sought, the situation would have more nearly resembled those in the cases which petitioners cite. But here there was no strike and no picketing. The petitioners acting pursuant to prior agreement simply refused to receive, unload and process milk carried in trucks by the farmer-producers of milk or by independent contractors unless the operators of the trucks joined their union. When the farmers and truck owners refused to join, they made good their threat to do this with attendant destruction of property rights of the defendant, and the destruction of the property of the farmers carried to the processing plant. They destroyed or sought to destroy the property rights of independent contractors and destroyed or sought to destroy the property of the farmers as they themselves brazenly admitted in order to force these farmers or independent contractors to join their union—which action would have made the contract haulers and farmers themselves parties to an illegal combination in restraint of trade. (*Allen Bradley Co. et al.* v. *Local Union No. 3, International Brotherhood of Electrical Workers et al.*, 325 U. S. 797, 65 S. C. R. 1533, 89 L. Ed. 1939.)

Clearly, such unlawful conduct cannot claim the protection of the First and Fourteenth Amendments to the Federal Constitution. The Supreme Court of the United States said in the case of *Carpenters and Joiners Union* v. *Ritters Cafe et al.* (315 U. S. 722, 86 L. Ed. 1143), l. c. 723:

"According to the undisputed finding of the Texas courts, which is controlling here, Ritter's Cafe was picketed 'for the avowed purpose of forcing and compelling plaintiff (Ritter) to require the said contractor, Plaster, to use and employ only members of the defendant unions on the building under construction in the 2800 block on Broadway.' Contemporaneously with this picketing, the Restaurant Workers' Union, Local No. 808, called Ritter's employees out on strike and withdrew the union card from his establishment. Union truck drivers refused to cross the picket line to deliver food and other supplies to the restaurant. The effect of all this was 'to prevent members of all trades unions from patronizing plaintiff's cafe and to erect a barrier around plaintiff's cafe, across which no member of defendant unions or an affiliate will go.' A curtailment of sixty per cent of Ritter's business resulted."

and again at l. c. 728:

"In forbidding such conscription of neutrals in the circumstances of the case before us, Texas represents the prevailing, and probably the unanimous, policy of the states. We hold that the Constitution does not forbid Texas to draw the line which has been drawn here. To hold otherwise would be to transmute vital constitutional liberties into doctrinaire dogma.

II.

Where either the purpose for which a conspiracy is formed is unlawful or the means by which it is sought to be effected is unlawful, a case of conspiracy is established.

Harelson v. *Tyler,* 281 Mo. 383, 219 S. W. 908.
Deitrich v. *Kate Brewery Co.,* 315 Mo. 507, 286 S. W. 38.

Lokse Patent Door Co. v. *Fueller,* 215 Mo. 421, 114 S. W. 997.

State of Missouri ex rel. to the use of Devault, v. *Fidelity & Casualty Co. of New York,* 107 F. (2d) 343 CCA 8, Mo.).

United Leather Works International Union v. *Herkert and Meisel Trunk Co.,* 284 F. 446.

International Harvester Co. v. *Missouri,* 234 U. S. 199, 34 S. C. R. 859, 58 L. Ed. 1276.

Associated Press v. *United States,* 326 U. S. 1, 65 S. C. R. 1416, 89 L. Ed. 2013.

American Medical Asso. v. *United States,* 317 U. S. 519, 63 S. C. R. 326, 87 L. Ed. 434.

Carpenters and Joiners Union of America v. *Ritters Cafe et al., supra.*

III.

The record shows that after the filing of the opinion of the Court *en banc* on the 10th of February, 1947, the petitioners filed no motion for rehearing. The rules of the Supreme Court of the State of Missouri, 1945 Revision (Rule 1.19, Page 14), provide for motions for rehearing with respect to all of the court's rulings and opinions, for the universally recognized purpose of affording the court an opportunity to correct its own errors.

Rehearings may be granted after an opinion of the Court *en banc,* even though such hearing is upon transfer to the Court *en banc* after a divisional opinion.

Kansas City Power & Light Co. v. *Town of Carrollton et al.,* 346 Mo. 802, 142 S. W. (2d) 849, l. c. 855.

The petitioners not having filed a motion for rehearing after the court's opinion was filed and therefore not having exhausted their remedies for appellate review in

the Missouri State Courts, this Court is left without jurisdiction in the cause.

Citizens Bank of Michigan City v. *Mary Opperman*, 249 U. S. 448, 63 L. Ed. 701.
Gorman v. *Washington University*, 316 U. S. 98, 62 S. C. R. 962, 86 L. Ed. 1300.
Eugene W. Osment v. *Norman B. Pitcairn and Frank C. Nicodemus*, 317 U. S. 587, 63 S. C. R. 21, 87 L. Ed. 481.

It is therefore respectfully submitted that the writ should be denied.

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